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REMARKS

1. The Office Action of August 11, 2006 is hereby acknowledged. The shortened statutory period of three (3) months time period for response to this Office Action expired on November 11, 2006. Concurrently with the filing of this Amendment, the Applicant has requested a two-month extension of time and has paid the appropriate fee. Therefore, the deadline for filing the Amendment is January 11, 2006. This Amendment is being mailed by Express Mail, Mail Label No. EV 943968241 US, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on January 3, 2007. Therefore, this Amendment is timely filed. In the event that the Commissioner for Patents should determine that any additional extension of time is required for this Amendment to be timely filed and an appropriate fee is due for that extension of time, then the Commissioner for Patents is hereby authorized to charge Deposit Account Number 18-2222 for such appropriate fee.

2. The original '212 Application had a total of 62 claims of invention wherein 14 were independent claims. Based upon the restriction requirement set forth by the Examiner, Claims 15-31 and 46-49 were withdrawn and therefore, only Claims 1-14 and 32-45 are still pending. Therefore, there are now 28 total claims of invention and wherein 6 are independent claims. While Dependent Claims 11, 12, 42 and 43 have been amended in accordance with the Examiner's directives, no additional claims have been added. Therefore, no additional fee is due. In the event that the Commissioner for Patents should determine that any additional fee is due, then the Commissioner for Patents is hereby authorized to charge Deposit Account Number 18-2222 for the appropriate fee.

3. As set forth in 2 of the Office Action, the Abstract of the Disclosure contains more than 150 words. Through this Amendment, the Applicant has amended the Abstract so that it has less than 150 words. Therefore, this directive has been complied with.

1 4. Responding to Paragraph 4 of the Office Action, the Examiner has rejected
2 Claims 11, 12, 42 and 43 under 35 U.S.C. §112 as being indefinite. In accordance with the
3 Examiner's directive, the Applicant has amended these claims to change the term "comprises" to
4 "consisting of". Therefore, with this amendment to the claims, the Examiner's directive has
5 been complied with and it is respectfully requested that the rejection under 35 U.S.C. § 112 be
6 withdrawn.

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8 5. The Applicant acknowledges with appreciation, the Patent Examiner's very hard
9 work in preparing the Office Action and taking the time to carefully study the present invention
10 and provide his critique. While the Applicant understands and appreciates the Patent Examiner's
11 position, the Applicant very respectfully disagrees with the Patent Examiner and affirmatively
12 states that the present invention is not made obvious by the primary Bates reference combined
13 with any of the other references cited by the Examiner. The Applicant will first address the
14 issues of the first primary Bates reference and, thereafter, discuss each of the additional
15 references and explain the differences between the present invention and the prior art and then
16 will explain how the claims have been amended to further define the present invention over the
17 prior art.

18
19 6. The first primary reference cited by the Examiner is United States Patent
20 5,155,927 issued on October 20, 1992 to Bates et al. For 'SHOE ELEMENT LIQUID
21 CUSHIONING ELEMENT' ("Bates"). The Patent Examiner is respectfully requested to look at
22 the Applicant's drawings and see Figures 1, 8, and 17 compared to the Bates drawings in Figures
23 1, 2 and 3. Just by looking at the devices themselves without any further argument, it is
24 abundantly clear that the two inventions are absolutely and totally different and have nothing
25 whatsoever to do with each other. The Applicant will now present more detailed arguments to
26 explain to the Examiner why the two inventions are totally dissimilar and why the present
27 invention is not obvious in view of the Bates reference and further, will address all of the
28 Examiner's arguments point by point.

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6.01 First, an examination of Bates shows it to be a utility patent teaching a shock absorbing insole comprised of membranes and chambers for the purpose of providing both cushioning and lateral support of the foot and is specifically designed for sports shoes for runners.

6.01.01 It is abundantly clear that what Bates had in mind was to take a shoe sole and adapt it so that it provides a cushioning support pad for three areas of the foot and so that the entire assembly provides a special cradle that nestles the foot in such a manner that prevents any side to side movement of the foot. It is clear from just an examination of the drawings of the present invention alone, that the present invention is completely different from Bates. The shoe sole of the present invention does not provide cushioning for three areas of the foot, but instead is under one section of the foot, specifically the toes; the portion under the toes is not for cushioning or for support, but instead is for tactile sensory stimulation of the toes; the toe support of the present invention does not prevent lateral movement of the foot, but instead disperses the load forces by the toes during the grasping-gripping motion of the toes during walking.

6.01.02 In addition, referring to Figures 4 through 18, the Bates design illustrates the cushion to be comprised of channels, grooves, and flexure joints that become a supporting structural element of the shoe. The Bates design requires the three support pads as load bearing structural supports for the shoe. It is abundantly clear that what Bates intended was to have the structural elements of the shoe designed in such a manner as to also provide, not just support for the shoe, but also to perform a "double duty" by creating the cradle, as discussed above. An examination of Figures 9 and 10 of the present invention show very clearly that the toe cushion does not have any channels, grooves or flexure joints, but is instead one open, internally unimpeded cell; the toe cushion is not a supporting structural element of the shoe, but is instead resting upon the structural support of the shoe. Therefore, it is abundantly clear that the cushioning elements of the Bates design is composed of a totally different material and serves a totally different purpose.

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6.01.03 In addition, referring to Figures 1, 9, and 14, the Bates design illustrates the cushioning elements to be viewed from the exterior of the shoe. The Bates design requires that the cushioning elements each have at least one sidewall exposed to the exterior open air and that the sidewalls that are exposed have an aesthetic quality. It is abundantly clear that the Bates design requires the cushioning elements to be of a such a nature and appearance that they enhance the exterior appearance and augment the sporty image of the shoe. Further, because the sidewalls of the cushioning elements are exposed, the outer casing of the cushions require that they be constructed of a material that can withstand the elements, as well as the wear and tear that the exterior of a sport shoe must experience. An examination of Figures 8 and 9 of the present invention shows very clearly that the cushioning element of the present invention is completely within the interior portion of the shoe; having no portion, sidewall or otherwise, exposed to the exterior of the shoe. Additionally, the toe cushion of the present invention does not have an aesthetic quality that enhances the appearance of the exterior of the shoe, in part because it resides entirely within the shoe, out of sight, and in part because it serves no such function. Additionally, because the toe cushion is out of sight, exclusively in the interior of the shoe, the cushion does not and cannot augment the exterior appearance of the shoe, neither to augment the sportiness of the shoe or for any other quality. Further, the outer casing of the toe cushion is not designed of a thick, tough material that can withstand the environment and provide structural support for the shoe, but instead is made of a soft, malleable material that can be manipulated by the toes and that also has a sensory enhancing quality. Therefore, it is abundantly clear that the cushioning elements of the Bates design is designed for a completely different purpose and composed of a totally different material.

6.01.04 In addition, referring to the abstract, the Bates design teaches the cushioning element that extends to the peripheral edge of the sole of the shoe have substantially transparent walls, whereby the liquid composition can be viewed. The Bates design requires that the cushioning element extend to the periphery of the sole and further that the peripheral portion of the cushion be transparent. It is clear that what Bates intended is to have a shoe that has

1 cushioning element that extends beyond the area under the foot in areas where it is impossible to
2 cushion the foot, so much so that the cushion can be seen on outside walls of the sole of the shoe.
3 In addition, Bates intends for that part of the cushion to be seen from the outside walls of the sole
4 of the shoe be transparent to add novelty and interest to the exterior of the shoe. It is clear from
5 an examination of Figures 1, 3, 8, 9, 10, 12, 11, 15, 17, 18, 19, and 20, that the present invention
6 does not extend to the outer periphery of the shoe. It is also clear that the cushioning element of
7 the present invention cannot be seen from the exterior of the shoe. Additionally, it is clear that
8 the cushioning element of the present invention is not transparent, has no need to be transparent,
9 and is not claiming to be transparent. It is further clear that the cushioning element of the
10 present invention does not, in any manner whatsoever, add any novelty or any interest to the
11 exterior of the shoe. Therefore, it is clear that the cushioning element of the Bates shoe is
12 entirely different from the cushioning element of the present invention.

13 6.01.05 In addition, referring to Figure 1, the Bates patent teaches that the
14 cushion is part of the outsole of the shoe. The Bates design requires that the cushioning elements
15 be a structural support of the sole of the shoe and of such a material that can bear the weight of
16 the foot and body of the wearer. It is clear that what Bates intended is to have a shoe sole that is
17 comprised of several layers, one of which is composed of three separate pieces that do not touch
18 each other that act like a tripod foundation on which the foot resides and with the layer above
19 this tripod foundation extending downwardly to fill in the void between the three cushioning
20 elements filling from the interior and extending outwardly to the periphery of the sole. It is clear
21 from an examination of Figures 8, 9, 10 and 12, that the present invention does not place the
22 cushioning element in the outsole of the shoe, but instead places it in the insole of the shoe. The
23 present invention does not use the cushioning element as a structural support, but instead, uses
24 the cushioning element merely as an additive element to the insole. The present invention is not
25 designed to bear the weight of the foot and body of the wearer, but instead, is merely a stimulus
26 for toes and to allow the toes to flex. The present invention is not comprised of three pieces, but
27 instead is a single crescent shaped piece. The present invention is not a tripod foundation
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1 device, but instead, is a single piece to stimulate the tactile sense of the under toe and to allow
2 the toe to flex within the shoe. Therefore, it is abundantly clear that the Bates device is
3 completely different from and has nothing to do with the present invention.

4 6.01.06 In addition, referring to Figures 1 and 2, the Bates patent teaches
5 that the cushioning element is in addition to and underneath a foam material that "preferably
6 covers the upper surfaces of the cushioning elements." (Col. 8, lines 8-9). The Bates design
7 requires that a second cushion be placed over its cushioning elements. It is clear from an
8 examination of Figures 6, 8, 10 and 12, that the present invention does not have a foam material
9 that covers the upper surfaces of the cushioning elements. In addition, the present invention
10 does not have a layer above the cushioning element, but instead, the cushioning element is the
11 upper layer, or at least one portion of the upper layer. Therefore, it is abundantly clear that the
12 cushioning element of the Bates shoe is entirely different from the cushioning element of the
13 present invention.

14 6.02 The Applicant will now address the Examiner's statements that are made in
15 the Office Action concerning the Bates reference.

16 6.02.01 The Examiner states beginning at paragraph 6 on Page 3 of the
17 Office Action, "Claims 1, 3-7, 9-14, 32, 34-38 and 40-45 are rejected under 35 U.S.C. 103(a) as
18 being unpatentable over Bates et al. 5,155,927 in view of Issler 6,922,918. Bates et al. '927
19 discloses all the limitations substantially as claimed including the following: a shoe 20 having a
20 shoe sole 30, 32, 60 etc. including an outsole 70, a midsole 30, an insole and having a front area
21 over which the toes of a foot rest when the shoe is worn, the improvement comprising: a non-
22 leaking deformable gel 300 (or padding) formed within the front area of the sole and aligned
23 with the insole (located underneath the insole) so that the gel 300 (or padding) is located in the
24 forefoot area of the foot when the shoe is worn, whereby the non-leaking deformable gel permits
25 the toes to curl, flex, bend or grasp downward when a wearer of the shoe is walking; the
26 deformable gel/padding is at least 6 mm (see Figures 1 and 2, typical thickness of a midsole); the
27 deformable gel/padding is aligned with a portion of the midsole in addition to being aligned with
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the insole (see figure 2); a cavity 42 formed into the front portion of the shoe to receive the deformable gel/padding; the shoe is an athletic shoe (see Figures); deformable material is covered with a covering material (see col. 10, lines 3-17).” This is absolutely and totally misreading what Bates shows. While Bates does show an improvement comprising a non-leaking deformable gel 300 (or padding) formed within the front area of the sole, this front area of the shoe is underneath the insole, which is itself a cushion made of a foam material and is not located in an area encompassing the tips of the toes to the base of the toes, but is instead from the base of the toes to the balls of the feet. Further, because the deformable gel/padding is underneath the foam cushioning material of the insole, it is incapable of being grasped by the toes. Further, because the deformable gel/padding is underneath the insole it is incapable of providing tactile sensory stimulus to the toes. Further, because the deformable gel/padding is underneath the balls of the feet it is not in an area where a toe can grasp it, but is instead just beyond the reach of the toes. Further, because the deformable gel/padding is underneath the insole, it cannot lie above the insole and be in direct contact with the toes. Further, because the deformable gel/padding is underneath the insole and is actually a structural support within the midsole under the balls of the feet, it must be constructed of a load bearing structural material capable of withstanding extreme and repeated pressures and flexing and cannot provide the pliancy of the present invention. Further, while Bates does illustrate a cavity formed into the front portion of the shoe to receive the deformable gel/padding, the cavity is not in the area covered by the tips of the toes to the base of the toes, but is instead under the balls of the feet. Further, while a cavity is formed into the front portion of the shoe to receive the deformable gel/padding, this cavity is not formed in the upper surface of the insole, but is instead in the midsole, under the insole. Further while Bates does illustrate all of the above in an athletic shoe, it is impractical to be applied to other types of shoes, such as dress shoes and sandals, whereas the present invention can be applied to any type of shoe.

6.03 Therefore, it is respectfully pointed out to the Examiner that the Examiner has completely misunderstood and mis-analyzed Bates in relation to the present invention and

1 Bates in no way teaches any part of the present invention as the entire structure of Bates serves a
2 totally different purpose and is designed in a totally different way for a totally different function
3 of having a load bearing structural support to prevent lateral and medial instability of the foot. It
4 is therefore respectfully pointed out that the Bates design is not a reference of any value, is
5 totally irrelevant to the present invention, and does not disclose or make obvious any portion of
6 any of the present invention.
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8 7. The Examiner then cites United States Patent 6,922,918 B2 issued on August 2,
9 2005 to Issler for 'METHOD AND APPARATUS FOR A SHOE HAVING AN ODOR AND
10 MOISTURE ABSORBENT PAD' ("Issler") to argue that it discloses a pad beneath the toes of
11 the foot so that all five toes rest on the pad and the base of the big toe right below the first
12 metatarso-phalangeal joint. It is abundantly clear that the Issler patent has no remote
13 relationship whatsoever to the present invention. Issler is simply a method of absorbing odor
14 and removing moisture under either the entire length of the foot or just a small portion of the
15 foot. The patent itself is for the method of creating this, as illustrated in Figures 1, 3 and 8,
16 utilizing a perforated vamp and an odor absorbing material, which is located between the layers
17 of the outsole on which the foot rests. Accordingly, the Issler patent is totally irrelevant to the
18 present invention and certainly lends nothing to Bates, which as already discussed, also does not
19 have anything to do with the present invention.
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21 7.01 The Examiner states just below the middle of Page 3 of the Office Action,
22 "Bates et al. '927 does not disclose the pad being located beneath the toes of the foot so that all
23 five toes rest on the gel and the base of the big toe right below the 1st metatarso-phalangeal joint
24 also rests on the gel as well as the gel being treated with a fungicide. Issler '918 teaches that a
25 pad used in a shoe underneath the toes of the user can be treated with odor absorbents and
26 bactericides (some bactericides function as fungicides) to cushion the user's toes and prevent the
27 buildup of smell within the shoe. Therefore, it would have been obvious, to one of ordinary skill
28 in the art at the time the inventions was made, to make the pad of Bates et al. '918, and to treat

1 the pad with a fungicide to prevent the buildup of bacteria and smell.” This is absolutely
2 incorrect. As discussed above, Issler is method of removing odor and absorbing moisture by
3 placing the odor/moisture absorbing material under a perforated insole. Therefore, the Examiner
4 is suggesting that a person with ordinary skill in the art would take the method of Issler,
5 consisting of a odor/moisture absorbing pad and a perforated insole, and would use this under the
6 toes in place of the load bearing structural material support of the forward-middle under ball of
7 the foot. This would also have the effect of removing from Bates the lateral and medial stability.
8 With all due respect, this would force the wearer to be walking on tip-toes and wobbling around
9 as well. The Applicant respectfully disagrees with the Examiner’s analysis.

10 7.02 An idea of what Issler teaches is best found in its title, a ‘METHOD AND
11 APPARATUS FOR A SHOE HAVING AN ODOR AND MOISTURE ABSORBENT PAD.’
12 This is completely different from the present invention. Further, the Issler odor/moisture
13 absorbing pad is also under the insole, like Bates, and is therefore incapable of being grasped by
14 the toes. Further, because the odor/moisture absorbing pad is underneath the insole, it is
15 incapable of providing tactile sensory stimulus to the toes. Further, because the odor/moisture
16 absorbing pad is underneath the insole, it cannot lie above the insole and be in direct contact
17 with the toes. Accordingly, Issler is totally irrelevant to the present invention and certainly lends
18 nothing to Bates, which as already discussed, also does not have anything to do with the present
19 invention.

20 7.03 The Applicant further suggests that not only does Issler have absolutely
21 nothing to do with the present invention, but also has nothing to do with Bates. Because neither
22 Issler nor Bates have any relation to each other, they cannot be combined. Further, Issler, which
23 is inapplicable to the present invention, lends absolutely nothing to Bates, which also is
24 irrelevant to the present invention. The Applicant respectfully disagrees with the Examiner’s
25 analysis and the Examiner’s conclusion that the present invention would be made obvious due to
26 Bates in light of Issler.
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1 8. Therefore, it is respectfully submitted that the Examiner's statement that Claims 1, 3-
2 7, 9-14, 32, 34-38 and 40-45 are rejected as being obvious based on a combination of Bates and
3 Issler is simply incorrect. It is therefore respectfully submitted that Claims 1, 3-7, 9-14, 32, 34-
4 38 and 40-45 of the Application, No. 10/800,233 are allowable.
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6 9. The third reference cited by the Examiner is United States Patent Application,
7 Pub. No. US 2005/0030340 A1, published on February 24, 2005 invented by Grisoni et al.
8 ("Grisoni"). The Examiner is respectfully requested to look at the Applicant's drawings and see
9 Figures 1 and 2 as compared to the Grisoni drawings in Figure 2. Just by looking at the devices
10 themselves without any further argument, it is abundantly clear that the two inventions are
11 absolutely and totally different and have nothing whatsoever to do with each other.
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13 9.01 The Applicant will now present more detailed arguments to explain to the
14 Examiner why the two inventions are totally dissimilar and why the present invention is not
15 obvious in light of Grisoni.
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17 9.01.01 First, an examination of Grisoni shows it to be a patent application
18 for a removable shoe insert which affects the ball of the foot. It is abundantly clear that what
19 Grisoni had in mind was an aftermarket insert a customer could buy to place within a shoe that
20 will cushion the area under the ball of the foot. The present invention is completely different
21 from Grisoni. The area of the foot that is cushioned is not the ball of the foot, but instead is the
22 area under the toes of the foot. The Grisoni design teaches that the cushioning element be
23 detached from the shoe so as to be portable whereas the present invention requires that the
24 cushioning element be fully incorporated in the shoe. It is abundantly clear that Grisoni teaches
25 a cushion that serves a totally different purpose and has nothing whatsoever to do with the
26 present invention.
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28 9.01.01 In addition, referring to Figures 1 and 2, the Grisoni invention
illustrates that the area which lies under the toes to be a flat, un-cushioning element and the area
under the ball of the foot have an upper surface that is a smooth, hill shape and an under surface

1 that has a sinusoidal configuration circumscribed by the base of the upper surface. It is clear that
2 what Grisoni had in mind was to create a cushion for the ball of the foot only with some type of
3 non-slip element beneath. An examination of Figures 6 and 8 of the present invention shows
4 very clearly that the cushioning element lies solely beneath the toes of the foot and that there is
5 absolutely no cushioning element under the ball of the foot whatsoever. Further, the present
6 invention has no sinusoidal configuration underneath the cushioning element nor is there any
7 non-slip element on the underside of the cushioning element. Therefore, it is abundantly clear
8 that the cushioning element of Grisoni is completely different and serves a totally different
9 purpose from the present invention.

10 9.01.02 In addition, referring to paragraph 0050 and Claim 6, the Grisoni
11 invention teaches that the planar surface surrounding the cushioning element be of a harder
12 material and has the only purpose of being better able to retain the inserts in position without
13 slipping. The Grisoni invention requires an extending surface from the base of the cushioning
14 element to be of such a nature so as to prevent the cushioning element from slipping around in
15 the shoe. It is clear that what Grisoni teaches is that any extension that is outside the
16 circumference of the cushioning element is of a different quality and is only for the prevention of
17 slippage. An examination of Figures 2, 6, and 8, of the present invention clearly shows that the
18 cushioning element has no extending features, but instead is immediately under the toe area only.
19 Further the cushioning element of the present invention does not require any extension because it
20 is incorporated into the shoe itself. Further, the cushioning element of the present invention does
21 not require any means to prevent slipping, because the cushioning element is directly
22 incorporated into the shoe. Because the present invention does not require any means to prevent
23 slipping, the composition under the toes does not need to be made of a harder material to prevent
24 slipping as taught in the Grisoni Application. Further, because the element under the toe is made
25 to prevent slipping, it is incapable of and not designed for the toes of the foot to grasp or grip the
26 portion that is under its toes, as required by the present invention. Further, because the
27 cushioning element of the present invention does not require it to be made of slip-prevention
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1 material, the material of the cushioning device of the present invention is completely different
2 from the Grisoni device. Therefore, it is abundantly clear that the planar extension of the Grisoni
3 device, and hence the area of Grisoni that lies under the toes, is composed of a totally different
4 material and serves a completely different purpose from the present invention.

5 9.01.03 In addition, referring to Figures 7 and 8, Grisoni illustrates that the
6 planar surface extends forward from the ball of the foot to the area under the toe. As discussed
7 above, the planar extension from the cushioning element under the ball of the foot and extending
8 forward to under the toes has nothing to do cushioning the toes, but instead merely provides a
9 means to secure the device. This extension has a second purpose of ensuring proper placement
10 of the cushioning element under the ball of the foot by having the planar surface extend as far
11 forward to the toe of the shoe. This provides that the user may place the Grisoni device into the
12 shoe and all the way forward towards the toe until the extension hits the toe end of the shoe. It is
13 clear that what Grisoni had in mind was to provide maximum grip within the shoe and ensure
14 proper placement of the cushioning device. An examination of Figures 8, 10 and 12 of the
15 present invention shows that the cushioning element is fully integrated into the shoe, thus
16 removing any need to indicate to the user where and how to properly place the cushioning
17 element. The element under the toes in Grisoni is merely to provide proper placement, whereas
18 the element under the toes in the present invention is the actual cushioning device.

19 9.01.04 In addition, referring to the Abstract, the Grisoni invention teaches
20 that the cushioning element lies underneath and is intended to separate the "bones second and
21 third metatarsals of the foot." The Grisoni invention requires that the cushioning element target
22 only the second and third metatarsal bones of the foot. It is clear that what Grisoni intends is to
23 have a cushioning device upon which the bones of the second and third metatarsals of the foot
24 may rest and, further, be separated from each other. In order to achieve this, the Grisoni
25 cushioning element cannot extend forward to the first metatarsal bone to support it in the same
26 manner as it supports the second and third metatarsal bones. An examination of the independent
27 Claims of the present invention, (for example Claims 1 and 4, etc.), clearly state that the only
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1 bones targeted and affected by the cushioning element is the first metatarso-phalangeal joint.
2 Therefore, it is abundantly clear that the upper surface of the cushioning element is a completely
3 different design and serves a completely different purpose from the present invention.
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5 9.01.05 The Applicant respectfully submits that the Grisoni invention has
6 nothing whatsoever to do with the present invention and is misapplied to the present invention.

7 9.02 The Applicant will now address the Examiner's statements that are made in the
8 Office Action concerning the Grisoni reference.

9 9.02.01 The Examiner states in Paragraph 7 at the bottom of Page 3 of the
10 Office Action, "Claims 2, 8, 33 and 39 are rejected . . . as being unpatentable over the references
11 as applied above in view of Grisoni et al. US 2005/0030340 A1 (Grisoni et al. '349). The
12 references as applied above disclose all the limitations of the claims except for the padding or gel
13 being covered with stretch material. Grisoni et al. '349 teaches that gel or padding material
14 located in the forefoot of a shoe can be covered with a covering containing stretch fabric, such as
15 Lycra, to allow for the covering to have low friction and prevent movement with the user's foot
16 (see end of [0052])." This is misreading and misapplying what Grisoni shows. The Examiner
17 refers to a "gel or padding material located in the forefoot," Grisoni shows that the "gel or
18 padding" is specifically under the ball of the foot, under the second and third metatarsal bones
19 and cannot extend forward of the second metatarsal bones, whereas the present invention is
20 specifically underneath the toes and does not extend any further back than the first metatarso-
21 phalangeal joint. In addition, the Examiner states that covering the padded area would "have
22 low friction and prevent movement with the user's foot." This concept is in direct opposition to
23 that of the present invention. The present invention requires that friction quotient between the
24 cushioning element and the toe is high so that the cushioning element can be grasped, gripped,
25 manipulated, and moved by the toes of the user. The Applicant respectfully suggests that the
26 Grisoni reference is totally irrelevant to the present invention and is misapplied.

27 9.02.02 The Examiner continues, "Therefore, it would have been obvious,
28 to one of ordinary skill in the art at the time the invention was made, to cover the gel or padding

1 of the references as applied above with Lycra, as taught by Grisoni et al. '349, to prevent the pad
2 from moving when the other layers of the shoe move during use." The references to which the
3 Examiner refers is Bates and Issler, both of which have already been shown to be totally
4 irrelevant and have nothing whatsoever to do with the present invention. However, to address
5 the Examiner's argument, the Applicant respectfully disagrees with the Examiner's analysis.
6 The Examiner is suggesting that the present invention is obvious in one of several combinations.
7 The Examiner is suggesting that it would be obvious to one skilled in the art to take the Bates
8 design of a load bearing, trip-pod foundation lying within the interior of the midsole and cover
9 the top of the element with Lycra. The Examiner could be suggesting that it is obvious to one
10 skilled in the art to combine Bates with Issler, which provides for a tripod midsole, wherein the
11 two back elements are load bearing supports and the single front element is an odor/moisture
12 absorbing pad and to cover the pad with Lycra before covering the entirety of the midsole with
13 the insole. With all due respect, either of these would provide for a very unstable shoe with a
14 midsole that is not attached to the rest of the shoe and in danger of falling out, and further
15 causing the wearer to walk as if he/she is on tip-toes due to the disparity in function and
16 composition of the two back elements that are load bearing supports and the front that is merely
17 a pad for odor/moisture control, and would have the bottom surface of the insole slip-sliding
18 over the Lycra surface of the odor/moisture pad in the midsole. It is therefore respectfully
19 pointed out that the Grisoni device is not a reference of any value at all and does not disclose or
20 make obvious any portion of any of the present invention and that one skilled in the art would
21 not be moved to make the combinations as implied in the Examiner's analysis.

22 9.02.03 The Applicant further suggests that not only does Grisoni have
23 absolutely nothing to do with the present invention, but also has nothing to do with Bates.
24 Because neither Grisoni nor Bates have any relation to each other, they cannot be combined. As
25 discussed above, Bates and Issler have nothing whatsoever to do with each other and Grisoni
26 cannot lend anything to either one. Further, Issler, which is inapplicable to the present invention,
27 lends absolutely nothing to Grisoni, which also is irrelevant to the present invention.
28

1 9.03 Therefore, it is respectfully submitted that the Examiner's statement that
2 Claims 2, 8, 33 and 39 is obvious based on a combination of Bates, Issler, and Grisoni is simply
3 incorrect. It is therefore respectfully submitted that Claims 2, 8, 33 and 39 of the present
4 Application are allowable.
5

6 10. Therefore, for all of the above-referenced reasons, it is respectfully submitted that
7 the present invention is not obvious. In addition, attached to this Amendment as **Exhibit 1** is a
8 report to the inventor Carlos Khantzis showing the unique features of the present invention. As
9 set forth, the inventor has invented an apparatus that permits the toes to flex downwardly
10 simulating the effect of walking on sand at the beach, thereby contributing to an increase in the
11 size of the calf muscles. The testing shown in the report attached hereto as Exhibit 1 showed
12 that when a person walking in the shoes "flexed" their toes downward, this generated an increase
13 in muscle activity of nine percent in the gastrocnemius muscles and twenty percent in the soleus
14 calf muscles. Further, the test results showed that walking without flexing the toes does not
15 induce any type of calf muscle activities. None of the inventors quoted by the Examiner have a
16 deep cavity containing gel which permits the toes to flex downwardly because basically, there is
17 no room for the toes to flex. Further, the testing as set forth in Exhibit 1 at the University of
18 Southern California shows that the invention is a viable product to enable individuals to flex their
19 toes and to build their calf muscles.
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11. Therefore, it is respectfully submitted that the present invention is totally unique and the prior references do not disclose or make obvious the invention based on all of the very extensive arguments set forth above. Therefore, this application is now in condition for allowance and issuance of a notice of allowance of Claims 1-14 and 32-45 is respectfully solicited.

Respectfully submitted,

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